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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/733,688	12/10/2003	Dirk Yerian	1390	9040

7590 06/29/2005

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EXAMINER

PURVIS, SUE A

ART UNIT	PAPER NUMBER
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1734

DATE MAILED: 06/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/733,688

Applicant(s)

YERIAN ET AL.

Examiner

Sue A. Purvis

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 April 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-58 is/are pending in the application.
- 4a) Of the above claim(s) 56-58 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7, 9, 19-21, 24, 25, 27-31, 33, 35, 45-47 and 50-54 is/are rejected.
- 7) ☒ Claim(s) 6, 8, 10-18, 22, 23, 26, 32, 34, 36-44, 48, 49 and 55 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of claims 1-55 in the reply filed on 25 April 2005 is acknowledged. The traversal is on the grounds that the restriction was made even though all claims are classified in the same class, that the examiner has failed to establish a *prima facie* case that such a restriction is required, and that the inventions do not hold a separate status or represent a different field of search. This is not found persuasive because the search required for the apparatus (claims 1-55) is not required for the method (claims 56-60), restriction for examination purposes as indicated is proper.

The requirement is still deemed proper and is therefore made FINAL.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 19, 20, 24, 27, 45, 46, 50, and 54 are rejected under 35 U.S.C. 102(b) as being anticipated by Marty (US Patent No. 5,451,287).

Regarding claims 1 and 27, Marty discloses an apparatus for applying a strip material to a tubular marker (46). The apparatus includes a base with a mandrel including clamps for holding the marker in place and means for rotating the base with the mandrel and marker to place the strip onto the object. (See generally Figures 1, 6, and 7.)

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Regarding claims 19, 20, 45, and 46, Marty includes a plurality of strip material applicator assemblies positioned to one side of the base.

Regarding claims 24 and 50, the object is circular with a uniform circumference.

Regarding claim 54, Marty discloses applying a reflective material.

4. Claims 1, 3-5,7 rejected under 35 U.S.C. 102(b) as being anticipated by Keller et al. (US Patent No. 5,047,107).

Regarding claim 1, Keller discloses a method and apparatus for applying a reflective sheet to a traffic cone. The apparatus includes a base (30) with a mandrel (32) and clamps (34, 36). The apparatus also includes a strip applicator (14) which is movable for engaging the material onto the object. (See Figures 1 through 5.)

Regarding claims 3-5, Keller discloses a tapered mandrel.

Regarding claim 7, the mandrel compliments the shape of the object to which the material is being applied.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 21 and 47 rejected under 35 U.S.C. 103(a) as being unpatentable over Marty as applied to claims 1, 19, 27, and 45 above.

Marty discloses the plurality of strip applicators being on one side of the axis of the base, however, it would have been obvious to one having ordinary skill in the art at the time the invention was made that an alternative to having them on one side of the base, there

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could be a strip applicator on each side, because this is a matter of design choice and within the purview of one of ordinary skill in the art.

7. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Keller as applied to claim 1 above.

Regarding claim 9, having the positioning of the clamps configured at about 90deg apart about a circumference is within the purview of one of ordinary skill in the art. It would have been obvious to one having ordinary skill in the art at the time the invention was made for an artisan would appreciated the need to position the clamps at a point where they are most effective.

8. Claims 27, 29-31, 33, 35, 50-53, and 54 are rejected under 35 U.S.C. 103(a) as being unpatentable over Keller.

Regarding claim 27, Keller discloses a method and apparatus for applying a reflective sheet to a traffic cone. The apparatus includes a base (30) with a mandrel (32) and clamps (34, 36). The apparatus also includes a strip applicator (14) which is movable for engaging the material onto the object. (See Figures 1 through 5.)

It would have been obvious to one having ordinary skill in the art at the time the invention was made based on the teachings of Keller that a similar device could be used to apply material to a drum in the same manner, because one of ordinary skill in the art would appreciate the advantages of having a machine to perform such an operation, rather to do so by hand.

Regarding claims 29-31, Keller discloses a tapered mandrel.

Regarding claim 33, one of ordinary skill in the art would appreciate the advantage of having a mandrel which compliments the shape of the object to which the material is being applied, thus providing better control of its rotation.

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Regarding claim 35, having the positioning of the clamps configured at about 90deg apart about a circumference is within the purview of one of ordinary skill in the art. It would have been obvious to one having ordinary skill in the art at the time the invention was made for an artisan would appreciated the need to position the clamps at a point where they are most effective.

Regarding claims 50 through 53, it is appreciated that the drum can be tapered or have a uniform circumference.

Regarding claim 54, Keller discloses applying a reflective tape.

Allowable Subject Matter

9. Claims 6, 8, 10-18, 22, 23, 26, 32, 34, 36-44, 48, 49, and 55 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Listed on attached PTO-892.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sue A. Purvis whose telephone number is (571) 272-1236. The examiner can normally be reached on Monday through Friday 9am to 6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher A. Fiorilla can be reached on (571) 272-1187. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Sue A. Purvis', with a stylized flourish extending from the end.

Sue A. Purvis
Primary Examiner
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SP
June 26, 2005